

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALBERTO ORLANDEZ-GAMBOA,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #
4/4/19

19-CV-2705 (CM)

99-CR-654-1 (CM)

TRANSFER ORDER

COLLEEN McMAHON, Chief United States District Judge:

Movant, currently incarcerated at FCI Allenwood in Pennsylvania, brings this *pro se* motion, under 28 U.S.C. § 2255, challenging his conviction and sentence entered in *United States v. Orlandez-Gamboa*, No. 99-CR-654-01 (CM) (S.D.N.Y. May 25, 2005).¹ For the reason set forth below, the Court transfers this action to the United States Court of Appeals for the Second Circuit.

Movant seeks to challenge his conviction and sentence. The Court's records show that Movant previously moved for relief under § 2255 to challenge the same conviction and sentence. *See Orlandez-Gamboa v. United States*, No. 07-CV-9658 (TPG) (S.D.N.Y. Feb. 11, 2009) (dismissing motion on the merits), 13-2763 (2d Cir. Oct. 4, 2013) (denying motion to file second or successive § 2255 motion); *Orlandez-Gamboa v. United States*, No. 13-CV-1923 (TPG) (S.D.N.Y. Apr. 12, 2013) (transferring motion to the Second Circuit as second or successive), 13-1371 (2d Cir. Sept. 16, 2013) (denying motion). Because Movant's previous motion under § 2255 was decided on the merits, this application is a second or successive motion. *See Corrao v. United States*, 152 F.3d 188, 191 (2d Cir. 1998).

¹ The criminal case was initially before the Honorable Judge Griesa, but was reassigned to my docket on April 21, 2017.

Before a second or successive § 2255 motion is filed in the district court, authorization from the appropriate court of appeals is required. 28 U.S.C. § 2244(b)(3)(A). Movant must therefore move in the United States Court of Appeals for the Second Circuit for permission to pursue this application.²

Accordingly, the Clerk of Court is directed to mail a copy of this order to Movant and note service on the docket. In the interest of justice, the Court transfers this motion under § 2255 to the United States Court of Appeals for the Second Circuit. *See* 28 U.S.C. § 1631; *see also* *Liriano v. United States*, 95 F.3d 119, 122-23 (2d Cir. 1996) (*per curiam*). This order closes this case. If the Court of Appeals authorizes Movant to proceed in this matter, he shall move to reopen this case under this civil docket number.

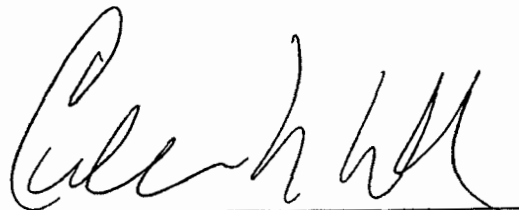
As the motion makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Clerk of Court is directed to docket this as a “written opinion” within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: April 3, 2019
New York, New York

A handwritten signature in black ink, appearing to read 'Colleen McMahon', is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge

² Movant must demonstrate that a motion to the Court of Appeals is based on newly discovered evidence or a new rule of constitutional law made retroactive by the Supreme Court. *See* 28 U.S.C. § 2255(h).